

*by Boyd Byers*

## **Don't be Dogged by Others' Prejudices**

Dogs have long been blamed for the sins of their human masters. Forget your homework? Tell the teacher your dog ate it. Pass gas in front of the in-laws? Point at Rover, and plug your nose. David Berkowitz, the "Son of Sam" serial killer, even claimed his neighbor's dog told him to kill.

It was only a matter of time before someone asserted the "my-dog-made-me-do-it" defense to an employment discrimination claim. In fact, it may be a case of life imitating art, as the television shows *King of the Hill*, *Curb Your Enthusiasm*, and *Chappelle's Show* all featured humorous story lines about racist dogs.

### ***Racism's bite worse than dog's bark***

Peter Adedayo Adelanwa didn't find his situation comedic. Adelanwa, a black Nigerian, tried to apply for a job at a wrought-iron business in Belgium. When he arrived, he was confronted by a barking dog. The business owner, Bruno Rampelberg, turned him away without even letting him in the door. Stunned, Adelanwa asked why. Rampelberg said he couldn't hire him because his dog (a Labrador named Blacky) was racist and there was a risk the dog would attack him because he isn't white.

Adelanwa complained to the local labor office and contacted the media. "My dog is racist, not me," Rampelberg told a local newspaper in his own defense. "I can't do anything against the fact that my dog is aggressive towards colored people. . . . My dog was traumatized." The labor office didn't buy it, concluding that the business owner was racist and removing him from its list of approved employers.

This is the first time we've ever heard of an employer blaming a dog for its hiring practices. But there have been a lot of cases in which employers tried to rely on customer, as opposed to canine, preferences to justify unlawful employment decisions.

### ***Prejudicial preferences prohibited***

The law is clear that customer preference isn't a defense to a discrimination claim, even if the employer would lose business by not following customers' desires or requests. If an employer takes action based on the discriminatory preferences of another — whether a customer,

coworker, or canine — it's also discriminating. Courts have explained that it would be contradictory to let customers' preferences determine whether discrimination is valid because those are precisely the types of prejudices the law is intended to overcome.

Courts have ruled that passengers' preferences for female flight attendants don't justify excluding men from those jobs and that foreign clients' gender biases don't excuse denying international operations leadership positions to women. Equal Employment Opportunity Commission (EEOC) guidelines instruct that it's illegal for a home health care provider to abide by a patient's expressed desire for a white home health care aide or for a retailer to deny an applicant a job as cashier out of concern his Sikh turban and religious attire may make customers uncomfortable. The EEOC goes even further and says an employer can't assign salespeople of a certain race to territories with high percentages of persons of the same race in hopes of increasing sales and benefiting the employees' careers because doing so would deprive employees of opportunities by limiting, segregating, or classifying them on the basis of race.

A narrow exception in the law allows employers to discriminate on the basis of religion, sex, or national origin (but not race) if it's a bona fide occupational qualification (BFOQ) necessary to the business' operations. Thus, customer preferences for same-gender employees to provide services that involve personal privacy may support a valid sex-based BFOQ. Examples include a washroom attendant, a janitor in a male bathhouse, and a nurse's aide in an all-female nursing home. The BFOQ exception is extremely limited, so don't rely on it without running things by your lawyer.

What do you do when customers express an unlawful preference? Emphasize that the company is committed to employing the most-qualified persons so it can best serve its customers. Explain your equal employment opportunity policies, pointing out that hiring the best person for the job is not only good business but also the law. Assure customers they can contact you (or the appropriate person) if they have legitimate problems with any employee. If all else fails, fire the customer — who wants to do business with people like that? Don't let a bad employment decision based on someone else's prejudices dog your company.

***Someone said it***

*“Customer preference” is to civil rights what the “heckler’s veto” is to free speech.*

— Unattributed